

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's own motion for the purpose of  
considering policies and rules governing utility  
construction contracting processes.

Rulemaking 03-09-006  
(Filed September 4, 2003)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

**1. Summary**

This ruling and scoping memo describes the issues to be considered in this proceeding and the timetable for their resolution. As required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling affirms the proceeding category, designates a principal hearing officer, addresses outstanding motions and clarifies issues relating to service of pleadings, following a prehearing conference in this proceeding on December 8, 2003.

**2. Proceeding Issues**

The Commission opened this rulemaking to investigate utility contracting processes. Rulemaking (R.) 03-09-006 addressed two types of contracting procedures that may be problematic. One, called "reverse auctions," solicits bids over the internet and permits bidders to continue to bid until the lowest bid is made. The other, called "bid shopping," occurs where a prime contract solicits subcontractor bids after a contract is signed and subcontractors have been designated. Large utilities filed reports regarding their contracting procedures on December 1, 2003. Parties filed initial comments in response to rulemaking questions on December 5, 2003.

At the prehearing conference and on the basis of the utilities' reports, the parties agreed that "bid shopping" does not appear to be a practice among large California jurisdictional utilities. Some utilities do use reverse auctions for construction contracts.

The International Brotherhood of Electrical Workers Local 1245, California State Pipe Trades Council, Northern California Mechanical Contractors Association, and the California Plumbing and Mechanical Contractors Association (together, "Unions") jointly filed comments in this proceeding recommending that the Commission adopt a rule limiting the practice of reverse auctions. In response to discussions at the prehearing conference, Unions agreed to present evidence, in the form of testimony or declarations that would address the impact of reverse auctions. Other parties suggested they might wish to respond to Unions' testimony or evidence. Parties also suggested they may wish to file replies to opening comments filed December 5, 2003. I agree with the Administrative Law Judge's (ALJ) observation at the prehearing conference that this scoping memo should provide a schedule for all of these pleadings.

This scoping memo affirms the scope of issues identified in R.03-09-006. I may modify the scope of issues following the receipt and evaluation of additional information and testimony.

### **3. Motions Seeking to be Excused as Respondents to Proceeding**

Several parties to this proceeding have filed motions to be excused from the informational requirements of the rulemaking. On October 16, 2003, AT&T Wireless Services of California, Cingular Wireless, Nextel Of California, Inc., Sprint Spectrum, Omnipotent Communications, and Verizon Wireless (Wireless Carriers) jointly filed a Motion to Narrow the Scope of the Proceeding to exclude wireless carriers from the rulemaking. Wild Goose Storage, Inc. filed a petition

for modification of R.03-06-009 on December 5, 2003 asking to be exempted from the requirements of the order. California Water Association filed a similar request on November 13, 2003, seeking to exclude as respondents all B, C, and D water utilities. Mountain Utilities filed a similar request on December 11, 2003.

R.03-06-009 makes all jurisdictional utilities respondents to this proceeding. Neither the ALJ nor the Assigned Commissioner has authority to change a Commission order in this regard. The ALJ and I will propose an order to the Commission in response to these motions and petitions as soon as possible.

#### **4. Procedural Schedule**

At the prehearing conference, several parties expressed concerns regarding the contracting information this rulemaking requires them to submit. SCE, PG&E and Sempra stated the information they provided to the Commission on December 1, 2003 about contracts over the past five years may not be complete or in a useful format. Some smaller utilities, whose information is due January 9, 2004, stated compiling the information is burdensome. Some proposed deferring the January 9 filing date until the Commission has considered outstanding motions and petitions to excuse certain parties from the requirements of the rulemaking, addressed above.

This scoping memo suspends the requirement of the October 21, 2003 ruling in this proceeding that smaller utilities file contract information on January 9, 2004 until such time as the Commission has responded to motions of several parties to be excused as respondents or from the information requirements of R.03-06-009.

The procedural schedule in this proceeding at this time is as follows:

Reports from wireless companies, utilities with annual California revenues less than \$500 million and water companies except Class A companies	To be determined following a Commission order responding to motions to be excused from the proceeding
Union declarations or testimony on utility contracting procedures served	February 4, 2004
Replies to union declarations or testimony; reply comments responding to opening comments filed December 5, 2003	February 25, 2004
Commission order on motions to exempt certain parties from requirements of R.03-06-009	As soon as possible
Further ruling on schedule, scope and need for hearings	March 1, 2004

This ruling affirms the Commission's intent to resolve all matters in this proceeding within 18 months of the date of this scoping memo, consistent with Pub. Util. Code § 1701.5.

#### **5. Motion of Wireless Carriers to File Opening Comments Late**

Wireless Carriers filed a motion to accept late-filed comments in the event the Commission denies their joint motion asking to be excused from this proceeding as respondents. No party objected to the motion. Granting the motion to file comments late will not create any delay in the proceeding or create prejudice. This ruling grants the motion to file late-filed comments so that the Commission may consider the parties' joint motion to be excused from the

proceeding as respondents. The ALJ or I will schedule a date for the comments and reports of wireless carriers, if needed, following the Commission's order responding to Wireless Carriers' motion to be excused from the proceeding.

#### **6. Category of Proceeding**

R.03-06-009 preliminarily determined that this is a quasi-legislative proceeding as described in Rule 5(d). No party has expressed any objection to this categorization. This ruling confirms that the proceeding is quasi-legislative.

#### **7. Need for Evidentiary Hearings**

R.03-06-009 anticipated that this proceeding would be conducted on the basis of written comments. No party has so far sought hearings in this proceeding. This ruling affirms the preliminary determination that hearings are not required in this rulemaking. I will reconsider the need for hearings if a party requests hearings after the unions have submitted evidence regarding the impact of utility contracting procedures.

#### **8. Principal Hearing Officer**

This ruling designates ALJ Kim Malcolm as the principal hearing officer in this proceeding.

#### **9. Service List**

The service list for this proceeding is located at the Commission's Website ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). Those who are not already parties, but who wish to participate in this proceeding as full parties must make their request by written motion to intervene, or orally on the record during the proceeding. Those not already participating, but who wish to do so as nonparties, may request that their names be added to the service list (in the "information only" or "state service" category) by sending an e-mail note to ALJ Malcolm ([kim@cpuc.ca.gov](mailto:kim@cpuc.ca.gov)).

This proceeding is unusual in that it currently makes every jurisdictional utility a respondent. The Commission cannot and has not expected parties to serve all documents on all respondents to date. Similarly, the new service list does not include all respondents. All Commission rulings, notices and decisions will nevertheless be served on every respondent in addition to those on the official service list. Jurisdictional utilities that did not ask to be included on the service list are responsible for getting copies of any pleadings from other parties. If the Commission eventually changes the list of respondents, it will not serve those utilities no longer respondents with Commission documents and that have not asked to be included on the service list, even if the utilities may ultimately be subject to rules the Commission adopts.

The Commission will use electronic service in this proceeding. No party at the prehearing conference sought hard copies of pleadings. Parties are not required to serve hard copies of pleadings to parties whose e-mail address is included on the Commission's official service list. Electronic service does not relieve the parties from the filing requirements of Article 2 of the Rules. All parties will receive hard copies of Commission rulings, notices, and orders.

As the ALJ stated at the prehearing conference, all parties who have filed opening comments in this proceeding should serve all parties on the new service list of the proceeding within 5 business days of the date of this ruling.

#### **10. Rules Governing Ex Parte Communications**

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that ex parte communications with decision-makers are permitted. An ex parte communication is defined as "any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural issues, that does not occur in a public

hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “ex parte communications.”

**IT IS RULED** that:

1. The scope of issues remains those issues identified in Rulemaking 03-09-006.
2. The schedule for this proceeding, is set forth in this ruling. The Administrative Law Judge (ALJ) may make any revisions to this schedule necessary for the fair and efficient management of the proceeding.
3. This proceeding is categorized as quasi-legislative. Evidentiary hearings do not appear necessary, consistent with R.03-09-006. This ruling on category may be appealed, as provided in Rule 6.4 of the Commission’s Rules of Practice and Procedure (Rules).
4. The motion of Wireless Carriers to file late comments is granted as set forth herein.
5. ALJ Kim Malcolm is the principal hearing officer in this proceeding.
6. In this proceeding, ex parte communications are permitted without restriction.

Dated December 29, 2003, at San Francisco, California.

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/s/ LORETTA M. LYNCH  
Loretta M. Lynch  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated December 29, 2003, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.